landline functions where technology is already well developed and efficient.

Unbundling will result in economic inefficiency because it does not create innovation or cost savings that can be passed on to consumers. Rather, it is an alternative revenue sharing scheme designed to create a protectionist price umbrella for resellers, ultimately leading to higher consumer prices in what otherwise would be a competitive retail market. The proposal will undermine cellular carrier's incentives to continue investing in infrastructure development and capacity expenditures.

E. **Unbundling will require micromanagement of technology.**

The OII's unbundling proposal simply will not work with existing analog technology. The existing all site radio technology does not support the distributed architecture or "inexpensive microprocessors" assumed in the OII. OII AT 27. The OII assumes that cell sites can operate at the direction of multiple MTSOs. Cell site radio equipment is not designed to handle the conflicting demands of multiple MTSOs.

While it may be possible in the future to design cell site radio equipment to accommodate multiple MTSOs, the design would be unduly expensive and technically inefficient. The cell site would be required to replicate switch functions in order to assign frequencies, route calls, arrange handoffs and determine billing for airtime. This design would result in additional expense to both resellers and cellular carriers, ultimately driving up the price for cellular service. Moreover, even if such technology is developed, it will result in regulatory micromanagement long after ESMRs and PCS provide alternative access to radio frequencies.

F. Unbundling will undermine federal standards.

The unbundling proposal will conflict with federal standards. When the FCC established the cellular service in the early 1980's, it addressed questions of preemption of state regulation of certain aspects of the cellular service. The FCC asserted federal primacy over technical standards and the competitive market structure for cellular service.[130] The FCC stated that "any state franchising regulations requiring demonstration of a general public need for cellular service could adversely affect our frequency allocation scheme . . . . [a] central element of the federal design for cellular operations."[131] In its reconsideration order, the FCC affirmed its preemption over technical standards for cellular systems, stating that such preemption was essential to the compatible operation of equipment on both local and national levels. The FCC said:

> We have carefully developed the technical requirements essential for efficient spectrum re-use and nationwide compatibility, while providing sufficient flexibility to accommodate new technological innovations. It is imperative that no additional requirements be imposed by the states which could conflict with our standards and frustrate the federal scheme for the provision of nationwide cellular service.[132]

Unbundling will allow cellular resellers, who are not licensed by the FCC, to exercise control over the cellular spectrum. Control of the use of these frequencies is the sole responsibility of the FCC licensee, which is obligated to comply with the terms of its license and the technical parameters set by the FCC. The radios in the cell sites have access to only one carrier's frequencies. This is the only way a

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130 Cellular Communications Systems, 86 F.C.C.2d 469, 504-505 (1981).

131 Id. at 505.

132 Cellular Communications Systems (reconsideration), 89 F.C.C.2d 58, 95 (1982) (emphasis added).

cellular carrier can control frequency interference, hand-off, reuse of the frequency and overall quality of the service. There is no technical means today for more than one cellular carrier to provide access over radio transmitters to the same frequency. Thus, there is no way to unbundle the "radio," as suggested, and not relinquish the control of the frequencies which the FCC has specifically allocated to the cellular common carrier licensees in each market.

The Commission's proposal attempts to create additional "facilities-based" cellular carriers in each market, in direct contradiction to the FCC's findings that the licensing of two 20 MHz systems best serves the public interest.[133] In the FCC's view, "this approach affords the public the benefits of some facilities-based competition in cellular services, while also taking into account the convincing record evidence . . . that, from a technical standpoint, cellular systems should be allocated no less than 20 MHz each."[134] In view of this, the FCC concluded that, within a 40 MHz total allocation, "efforts to increase the number of competitive systems beyond two would not be warranted."[135] This Commission's unbundling proposal would undermine the FCC's carefully thought out cellular scheme and cannot be undertaken without the FCC's approval.[136]

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133 Cellular Communications Systems, 86 F.C.C.2d at 476. The Commission initially licensed the systems at 20 MHz and later increased the allocation to 25 MHz.

134 Id.

135 Id.

136 The FCC considered and rejected a proposal for required frequency sharing. The FCC determined that while sharing the 40 MHz cellular allocation among several users theoretically held out the promise of greater competitive entry than the two-per-market approach, it did not consider adequately the technical requirements of cellular design. Id. at 477.

Similarly, to the extent that unbundling impacts interstate calls, the proposal may conflict with the federal scheme. Interstate cellular calls fall within the FCC's exclusive jurisdiction pursuant to Section 2(a) of the Communications Act of 1934. 47 U.S.C. § 152(a). Pursuant to sections 2(b) and 201 of the Communications Act, the FCC has specifically found that its jurisdiction over the physical plant used in the interconnection of cellular carriers is plenary and exclusive:

> [t]he physical plant used in interconnection of cellular carriers . . . is within our plenary jurisdiction because the identical plant serves both intrastate and interstate cellular services . . . . Further, we find that the Commission has plenary jurisdiction over NXX codes, as well as jurisdiction to require interconnection negotiations to be conducted "in good faith".[137]

Because switches are part of the "physical plant used in interconnection of cellular carriers" (Id. at 2911), they fall under the plenary jurisdiction of the FCC. The Commission thus lacks the authority to require the carriers to interconnect with the resellers' switches without consideration of the FCC's standards and policies regarding such interconnection.

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137 Cellular Interconnection (Declaratory Ruling), 2 F.C.C.R. 2910, 2911 (1987). Cellular physical plant is inseparable; the interconnected trunk lines and equipment of a cellular system are used to make both interstate and intrastate calls. Id. at 2912. Thus, Section 2(b) of the Communications Act does not limit the FCC's jurisdiction in this area. Id. The FCC has declined to assert jurisdiction only over purely local services that can be practicably separated from interstate services supplied by the same facilities. See People of State of California v. F.C.C., 567 F.2d 84 (D.C. Cir. 1977), cert. denied, 434 U.S. 1010 (1978).

VI. CELLULAR SERVICE IS NOT A BASIC SERVICE.

(Appendix A, Questions 13 and 50)

A. The Commission has declined to characterize cellular as a basic service.

Cellular service provides a mode of communications complementary to wireline service. The easy ubiquity to the landline network will continue to limit the cellular market into the indefinite future.[138] There are approximately 13 million cellular units in service nationwide as compared with approximately 130 million local access lines. For the vast majority of the population, borrowing a phone or using a pay phone satisfies their need to communicate when away from the home or office.

In light of the nature of cellular usage, the Commission declined in 1990 to set a basic service goal for the cellular industry based on the observation that cellular service does not replace or compete directly with landline service. See D.90-06-025 at 7. The bulk of cellular calls that interconnect with the local exchange are calls that would not otherwise have been made had cellular not existed. Id. at 18. Similarly, the Commission declined to set a universal service goal for cellular, finding that cellular is a "high-cost developing industry undergoing rapid technological changes." Id. at 13.

Most recently, the Commission concluded that mobile services should not be included in basic services at this time since they are subject to "an enormous amount of technological change" and "mobile capabilities are being fundamentally restructured to account for major changes in

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138 The Commission has observed that the "basic means of communication is provided by the local telephone companies." Rprt. to Gov. at 13. "Traditionally, basic service has referred to the group of telecommunications services that enjoy social status as essential for Californians." Id.

radio spectrum availability at the federal level." Rprt. to Gov. at 21. This conclusion will remain true as cellular faces the conversion to digital and need for technological innovations to meet the competition.

B. Cellular and landline services do not compete in the same product markets.

In determining whether cellular service has become a sufficient substitute to landline telephone service to cause continued regulation by the Commission, the initial question is whether cellular telephone service and landline telephone service compete in the same product market.[139] According to the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (April 2, 1992) that question depends on whether a hypothetical, profit-maximizing firm not subject to price regulation could impose a "small but significant and nontransitory" increase in price. With regulatory approval a local exchange carrier could raise its price of landline service without losing customers to cellular service in sufficient numbers to limit the price increase.[140] The price of landline telephone service does not constrain the price of cellular service.

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139 The Attorney General Recently concluded, in connection with the AT&T/McCaw merger, that landline telephone and cellular service providers do not compete with one another. See Opinion of The Attorney General on Competitive Effects of Proposed Merger of American Telephone & Telegraph Company and McCaw Cellular Communications, Inc., February 9, 1994 at 14. See also, Hausman Affidavit at 20-21 ("landline telephone and cellular are in different antitrust markets"); Geodesic II Report, at 4.133 ("mobile services occupy a market separate from stationary ones").

140 Hausman Affidavit in Civil Action No. 82-0192 at 21.

C. Neither cellular capacity nor cellular penetration is sufficient to warrant a basic service classification.

Cellular faces severe capacity constraints which prevent it from serving the bulk of landline customers at any cost. The current analog cellular system does not have the capacity to compete with landline service. In many major urban markets in California, cellular systems are operating at or near capacity with access to only 3-4% of the population, while landline telephone access is 95%.[141] If residential and business customers attempted to use cellular telephones at their landline usage rates, the capacity on cellular would decrease significantly. Even with the conversion to digital in the future, cellular networks will not have the capacity to meet landline usage rates.

Additionally, neither supply nor demand conditions demonstrate that cellular is a significant substitute for landline service. Currently, cellular usage is less than 1% of landline telephone usage. The average landline access line uses about 1100 minutes of use per month (including local and toll calls) while the average cellular telephone is used about 160 minutes per month.[142] Even the more optimistic forecasts for cellular penetration are only in the range of about 15-20% by the year 2000.

D. Cellular costs are significantly higher than landline costs.

Cost still precludes substituting cellular for landline. For almost all applications, cellular remains more expensive than conventional

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141 See Hausman Affidavit at 22.

142 See Department of Commerce estimate, 1991 U.S. Industrial Outlook at 29-1).

landline technology.[143] Cellular is likely to remain at a significant cost disadvantage in the future since landline costs may well fall more rapidly than cellular. Under the current analog system, there are distinct diseconomies of scale of cell splitting as a cellular system is expanded. Thus, while the process of cell splitting increases the overall capacity of that portion of a cellular system, it reduces capacity per cell and increases cost per cell causing average cost per subscriber to rise as more capacity is added. Additionally, with the impending conversion to digital, it is doubtful that cellular costs will approach landline costs in the near term.

E. A designation of cellular as a basic service is inappropriate in light of the dynamic nature of the market.

The current evolution of local exchange service into a competitive market warrants caution in prematurely designating discretionary services as "basic service." In light of the removal of barriers to entry into the local exchange and video distribution markets, as proposed in H.R. 3626 and 3636, and the converging markets for cable, video, telecommunications and computers, extension of basic service obligations to other services is unwise and unwarranted. The Commission should focus on ensuring that wireless service providers have the incentive to invest in technologies that will contribute to the infrastructure for the information superhighway.

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143 In rural service areas wireless service can be provided on a more cost effective basis through BETRS. Moreover, as the Commission has observed that: "high quality landline service is already widely available in most rural areas at reasonable prices because of numerous assistance programs and policies established for rural landline telephone companies to ensure continued affordable telephone service." D.90-06-025 at 13.

VII. CONCLUSION.

PacTel submits that there is no evidence to support the assertions which serve as the basis for the OII's proposed dominant/nondominant regulation. The Commission should:

(a) hold hearings regarding the level of competition in the wireless market and the impact of existing regulation on such competition;

(b) hold workshops to develop the appropriate measurements for competition in the new wireless market; and

(c) develop a plan to monitor competition in the new marketplace and to protect consumers.

Dated: February 25, 1994.

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CERTIFICATE

I certify that I have this day filed an original and twelve copies of the attached Opening Comments of PacTel Cellular (U-3001-C) and Its Affiliates Los Angeles SMSA Limited Partnership (U-3003-C) and the MODOC RSA Limited Partnership (U-30-32-C) to the Order Instituting Investigation Into Mobile Telephone Service and Wireless Communications (I.93-12-007) filed on February 25, 1994.

Dated: February 25, 1994 at San Francisco, California.

Mary B. Cranston

11597691

Before the Public Utilities Commission

of the State of California

Investigation on the Commission's own motion into Mobile Telephone Service and Wireless Communications.	))))	I.93-12-007 (Filed December 17, 1993)

REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, PACTEL CELLULAR (U-3001-C) AND ITS AFFILIATES, LOS ANGELES SMSA LIMITED PARTNERSHIP (U-3003-C) AND THE MODOC RSA LIMITED PARTNERSHIP (U-3032-C), TO THE ORDER INSTITUTING INVESTIGATION INTO MOBILE TELEPHONE SERVICE AND WIRELESS COMMUNICATIONS

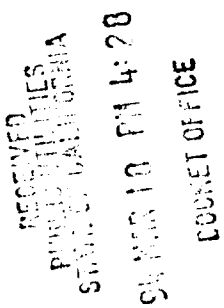

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

California Public Utilities Commission Decisions and Orders

Statutes and Codes

Other Authorities

AirTouch Communications, PacTel Cellular and its affiliates (collectively "AirTouch Communications")[1] hereby submits its reply comments to the Order Instituting Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications ("OII").

I. INTRODUCTION AND SUMMARY OF POSITION.

It is clear from the parties' opening comments to the OII that, prior to establishing a new regulatory framework for the wireless marketplace, the Commission must hold hearings to resolve numerous disputed factual issues. Some parties have recommended regulatory changes which are at odds with prior Commission findings. Due process requires that the parties be given an opportunity to be heard before such changes can be implemented. Moreover, the parties have raised critical issues of fact with respect to virtually every aspect of the regulatory framework proposed in the OII, including, among others:

- The impact of existing regulation on competition and consumers,
- The level of competition between cellular carriers,
- The breadth of the relevant product market in which cellular competes,
- The appropriate measurements of competition and market power in the relevant market,
- The ability of new wireless service providers to enhance competition,
- The impact of disparate regulatory treatment of wireless service providers,

1 AirTouch Communications is the parent company of PacTel Cellular. PacTel Cellular (U-3001-C) is the managing general partner of the Los Angeles SMSA Limited Partnership (U-3003-C) and the Modoc RSA Limited Partnership (U-3032-C), and operates in its own interest in the San Diego market.

- The need for and form of rate regulation in the wireless marketplace,
- The Commission's authority to order unbundling and rate regulation,
- The existence of a bottleneck to justify unbundling,
- The economic impact of unbundling in a competitive market,
- The value of unbundling to consumers,
- The technical feasibility of unbundling, and
- Cellular service's role as a basic service.

The wide disparity in the positions of the parties reflected in the opening comments demonstrates that the Commission cannot simply accept bare assertions. AirTouch Communications submits that many of the claims of the proponents of unbundling and rate regulation are totally unsupported by actual market experience and are based on faulty analysis. In light of the Commission's goal to enhance California's competitive advantage, the dynamic nature of the market created by the new competitors and technological innovation, the federal and national trend towards deregulation and the Congressional intent for equal treatment of all wireless service providers, the Commission should proceed with caution. Both the fundamental requirements of due process, as well as sound regulatory policy, require evidentiary hearings to resolve these matters. Hearings will demonstrate that relaxed regulation is the only regulatory framework that can keep pace with technological and competitive changes in wireless communications and meet the Commission's goals. A relaxed regulatory framework ensuring equal treatment for all wireless service providers, in conjunction with a monitoring program to assess competition among service providers, will encourage innovation while protecting consumers.

II. THE REQUIREMENTS OF DUE PROCESS AND SOUND REGULATORY POLICY REQUIRE THAT HEARINGS BE HELD PRIOR TO IMPLEMENTING A NEW REGULATORY FRAMEWORK.

In I.88-11-040 the Commission pursued an intensive investigation of cellular service in which all parties were allowed to present evidence and comment upon the proposals of their opponents. Phases I and II of that investigation culminated in Decision No. 90-06-025, which established a regulatory framework utilizing competitive forces to set prices and encourage technological innovation to expand system capacity. The OII and certain parties now propose to replace the regulatory framework established in D.90-06-025 with cost-based/rate of return regulation totally at odds with the Commission's prior findings. There has been no evidence presented that demonstrates that changes in the market since D.90-06-025 warrant more restrictive regulation. To the contrary, the entrance of new competitors and the rapid advancement of technology compel a less restrictive approach. The Commission cannot reverse its prior findings without an opportunity to test, through evidentiary hearings, the assumptions upon which such a reversal would be based.

Due process and Public Utilities Code sections 1705 and 1708 require that the Commission afford the parties an opportunity to be heard before abandoning its findings in D.90-06-025. See e.g., Matthews v. Eldridge, 424 U.S. 319, 333 (1976); City of Los Angeles v. Public Utilities Commission, 15 Cal. 3d 680, 699-701 & n. 34 (1975); Southern Pacific Transportation Co. v. Public Utilities Commission, 18 Cal. 3d 308, 311 n.2 (1976). Any abrupt about-face from the Commission's prior findings would deny the "fundamental fairness" that is the essence of due

process.[2] Lassiter v. Department of Social Services, 452 U.S. 18, 24 (1981); see Camp Meeker Water System, Inc. v. Public Utilities Commission, 51 Cal. 3d 845, 864 (1990).

Any decision establishing a more restrictive regulatory framework based solely on the radically conflicting comments of the parties would be beyond the Commission's authority. The decision must contain separately stated findings of fact and conclusions of law "on all issues material to the decision." Cal. Pub. Util. Code § 1705. To the extent that material facts are in dispute, those findings must be based on an evidentiary record.[3] In this instance, the OII precluded a full submission of evidence through prepared testimony by mandating that comments be limited to eighty pages. Obviously, the evidentiary record required in this proceeding could not be adequately addressed within the constraints imposed by the OII. Any attempt to establish a new regulatory framework without evidentiary hearings would require the

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2 For example, in California Trucking Assn. v. Public Utilities Commission, 19 Cal. 3d 240 (1977) the Commission staff developed a proposal to eliminate previously set minimum trucking rates. The Commission sent this proposal to various interested parties, inviting comments and suggestions, and stating that in the absence of substantial objection, the proposal would be adopted as an ex parte order of the Commission. Notwithstanding the trucking association's objection to this procedure, the proposal was adopted on an ex parte basis. The Supreme Court subsequently held that the opportunity afforded to interested parties to comment on, and protest the proposal, did not satisfy the requirements of Section 1708, and that a "trial-type hearing" was required. The Court stated: "[w]e cannot agree with this contention [that a hearing was not required]. The phrase 'opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal" 19 Cal. 3d at 244.

3 See Camp Meeker Water System, Inc. v. Pub. Util. Comm'n, 51 Cal. 3d 845, 863-64 (1990); California Manufacturers Ass'n v. Pub. Util. Comm'n, 24 Cal. 3d 251, 258-90 (1979); Greyhound Lines, Inc. v. Pub. Util. Comm'n, 65 Cal. 2d 811, 813 (1967); Pacific Telephone & Telegraph Co. v. Publ. Util. Comm'n, 62 Cal. 2d 634, 645-49 (1965); California Motor Transp. Co. v. Pub. Util Comm'n, 59 Cal. 2d 270, 273-74 (1963).

Commission to rely upon evidence outside the record and untested by cross-examination, to make findings unsupported by evidence, and to render conclusions unsupported by or inconsistent with its own prior findings. These actions would be contrary to the Public Utilities Code and violate due process of law. Toward Utility Rate Normalization v. Public Utilities Commission, 22 Cal. 3d 529, 546-547 (1978); see California Portland Cement Co. v. Public Utilities Commission, 49 Cal. 2d 171, 179 (1957).

At a minimum, sound regulatory policy requires that the Commission hold evidentiary hearings prior to implementing a new regulatory framework. Every major regulatory framework established by the Commission has been based on evidence, not mere assumptions. In establishing the dominant/nondominant regulatory structure for interexchange carriers, the Commission held extensive hearings and received evidence.[4] Similarly, the forms of cost-based/rate of return regulation advocated by certain parties have only been adopted in other industries after lengthy hearings.[5] The Commission cannot ignore its duty to establish a regulatory framework based on evidence of actual market conditions, rather than unsupported assertions. Indeed, the need is more compelling here, where the parties have raised numerous hotly contested issues and where a more restrictive regulatory framework would be contrary to the Commission's prior findings regarding the appropriate level of regulation for cellular service.

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4 15 CPUC 2d at 431-432.

5 See D.90362, 1 CPUC 2d 488 (1979); D.84-06-111, 15 CPUC 2d 232 (1984); D.86-01-026, 20 CPUC 2d 237 (1986); D.87-12-067, 27 CPUC 2d 1 (1987).

III. THE PARTIES HAVE RAISED CRUCIAL FACTUAL ISSUES REGARDING THE IMPACT OF EXISTING REGULATION ON CONSUMERS.

A new regulatory framework cannot be created in a vacuum. A thorough review of the impact of existing regulation is a critical first step. Numerous parties conclude in their opening comments that existing regulation has not enhanced competition.[6] The parties differ, however, in their conclusions regarding the aspects of existing regulation that have limited competition. The existing "crazy quilt" of cellular regulation has risen from ad hoc decisions which have gradually and substantially undercut the flexibility originally envisioned by the Commission in D.90-06-025. The subsequent restrictions on the pricing flexibility originally adopted by the Commission have been prompted not by consumers, but by competitors, and have led to the rejection of innovative pricing proposals and the creation of an artificial retail markup for resellers.[7] AirTouch Communications concurs with DRA's assessment that

> "[t]he Commission's attempt to foster competition through the two-tiered wholesale/retail market structure has resulted in a costly and inefficient regulatory burden on carriers, resellers, and Commission staff. . . . [T]his margin requirement only serves to protect the business opportunities of

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6 Opening Comments of Division of Ratepayer Advocates ("DRA") at 4; Opening Comments of PacTel et al. ("PacTel") at 4-11; Opening Comments of Cellular Resellers Association ("CRA") at 24; Opening Comments of Fresno MSA et al. ("Fresno") at 38; Opening Comments of Los Angeles Cellular Telephone Company ("LACTC") at 17-22; Opening Comments of RSA No. 3 ("RSA No. 3") at 6; Opening Comments of U S WEST ("U S WEST") at 27-29.

7 It should be noted that the comments submitted in the response to the OII provide an additional illustration of the potential for abuse of the regulatory process since competitors, including those currently exempt from regulation, have attempted to use the proposals set forth in the OII to their advantage. See, e.g., Opening Comments of Nextel ("Nextel") and Opening Comments of MCI ("MCI") (advocating dominant treatment for their cellular competitors).

independent resellers who have been 'ineffective in enhancing competition in the cellular market'."[8]

The ad hoc decisions reducing pricing flexibility, including the mandated reseller margin, have not been subject to review to determine their actual impact on competition and consumers. Conversely, there has been no opportunity to assess the benefits of increased pricing flexibility that have been recently gained through the Assigned Commissioner's Ruling in I.88-11-040 dated March 25, 1993. In the absence of hearings to explore the impact of existing regulation on cellular service, the Commission cannot assume that even more onerous regulation will benefit consumers. Moreover, there is no evidence supporting such an assumption in the context of the new multi-competitor wireless marketplace.

The parties also have raised issues regarding the impact of regulation in other states. It is undisputed that no other state regulates cellular as extensively as California and that the national trend is towards deregulation.[9] CRA asserts, however, that the fact that other states may have little regulation is irrelevant because California faces "greater demand for cellular services, high disposable income, great population density and a highly mobile population." CRA at 31. DRA similarly asserts that these factors distinguish California from other states but DRA recognizes that these market conditions do not prescribe a specific approach to regulation. DRA at

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8 DRA at 4, 25.

9 See PacTel at 4-8; Fresno at 47-48; LACTC at 1; Opening Comments of Pacific Bell ("Pacific Bell") at 34. Cellular Services, Inc. maintains that regulation in other states has not lowered rates because other states have not imposed cost-based regulation on cellular service. Opening Comments of Cellular Service, Inc. ("CSI") at 29-30. CSI does not address the critical issue--why the states have elected to forbear from such restrictive regulation.

20. Indeed, DRA admits that California attracts more wireless competitors than other states, thus presumably creating a more competitive environment. Ibid.

AirTouch Communications is prepared to present evidence at hearings which considers the factors identified by DRA and CRA and confirms that regulation of wholesale cellular rates has led to higher prices for consumers in states that regulate cellular. The evidence will also show that flexible cellular rate plans, lower cellular prices and greater consumer choice are most evident in unregulated states. The Commission cannot assume that restrictive regulation will benefit consumers.

IV. THE OII's PROPOSED REGULATORY FRAMEWORK IS BASED ON UNSUPPORTED ASSUMPTIONS.

The Commission must make an independent assessment of the level of competition between cellular carriers and the level of competition among multiple competitors in the new wireless telecommunications market. The Commission has recognized that

> a far-reaching redefinition of the cellular market over the next few years [due to] the impending entry of competitive non-cellular alternative carriers into the mobile telephone market will result in deep changes to the competitive aspects of the industry. D.93-05-069 (mimeo) at 12-13 (Ordering ¶ 3(b)).

In light of these "deep changes to the competitive aspects of the industry," the Commission cannot make simple assumptions regarding the potential level of competition and the appropriate regulatory framework.

A. The Commission cannot accept the baseless claim that cellular carriers do not compete.

Certain parties have claimed that cellular carriers do not compete effectively. They support this claim with allegations of: a lack of price competition, anticompetitive behavior, the existence of partner-competitor relationships and carriers' recovery of "monopoly rents."

These assertions are based on theory, in many cases incorrectly applied, rather than hard facts. An examination of these claims demonstrates that they are not supported by the evidence of actual industry conditions and that cellular carriers do in fact compete effectively.

1. Evidence presented at hearings would demonstrate that cellular carriers compete on the basis of price, service and product innovation.

The principal "evidence" of a lack of competition between cellular carriers identified by certain parties is the alleged failure to reduce prices and the similarity of prices for cellular service.[10] This assertion is incorrect and is predicated on a simplistic analysis which ignores both basic economic theory and the significant evidence of competition between the cellular carriers.

The parties' opening comments reveal that the cellular carriers can present evidence demonstrating that rates have declined substantially and that the overwhelming majority of customers subscribe to plans which offer a discount off the basic plan.[11] Additionally, the carriers can demonstrate that a broad variety of innovative pricing programs have been offered, thus increasing consumer choice.

Moreover, simple observations regarding prices fail to recognize several significant factors. An accurate evaluation of prices must take into consideration the investment of cellular carriers necessary to meet demand and the continued need for substantial investment driven by

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10 See DRA at 5; CRA at 11; CSI at 4.

11 PacTel at 16-17; Opening Comments of GTE Mobilnet ("GTEM") at 22-23; Opening Comments of Cellular Carriers Association of California ("CCAC") at 20-22; Opening Comments of McCaw ("McCaw") at 9-10; Opening Comments of Bay Area Cellular Telephone Company ("BACTC") at 10-17; LACTC at 10-12; Fresno at 9; U S WEST at 12-14.